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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN B. TURNER,

Plaintiff,

v.

DUSTIN TIERNEY,

Defendant.

No. C 12-6231 MMC

**ORDER DENYING PLAINTIFF'S MOTION  
FOR JUDGMENT BY DEFAULT**


Before the Court is plaintiff Stephen B. Turner's Motion for Judgment by Default, filed January 18, 2013, by which motion plaintiff seeks entry of default judgment against defendant Dustin Tierney pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Default judgment may not be entered prior to entry of default by the Clerk of Court. See Brooks v. United States, 29 F. Supp. 2d 613, 618 (N.D. Cal. 1998) aff'd, 162 F.3d 1167 (9th Cir. 1998) (denying motion for default judgment where clerk had not entered defendant's default; holding "default judgment may be entered only upon the entry of default by the Clerk of the Court"); Johnson v. Dayton Elec. Mfg. Co., 140 F.3d 781, 783 (8th Cir. 1998) (holding "entry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b)"). In the instant case, the Clerk of Court, on January 25, 2013, denied entry of default.

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1 Accordingly, default not having been entered, plaintiff's motion is hereby DENIED.  
2 **IT IS SO ORDERED.**

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4 Dated: January 25, 2013

  
MAXINE M. CHESNEY  
United States District Judge